Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

<u>Reply Comments of Montana Independent Telecommunications Systems (MITS), the Montana Telecommunications Association (MTA), Mid-Rivers Telephone Cooperative and Ronan Telephone Company</u>

I. Introduction/Access Reform to Date.

These Reply Comments are filed on behalf of Montana Independent Telecommunications Systems,[1] the Montana Telecommunications Association,[2] Mid-Rivers Telephone Cooperative, and Ronan Telephone Company. Each of these organizations has a direct and substantial interest in any new or amended rules affecting intercarrier compensation.

As noted in our initial comments, each of the companies represented via these comments is somewhat different from the others in terms of size (ranging from less than a thousand local Montana lines to more than sixty thousand), the geography and population density of its service area and its service offerings. However, all of the companies are the same insofar as intercarrier compensation is a critically important element of their ability to recover their costs and generate a reasonable rate of return.

We want to reemphasize in these reply comments that we have not just been sitting around waiting for regulators to address the intercarrier compensation system. Knowing that we needed to reduce to some degree our reliance on intercarrier compensation, nearly all of the companies endorsing

[1] Whose members are: Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Southern Telephone Company and Triangle Telephone Cooperative Association.
[2] Which represents a number of telephone companies and cooperatives operating across Montana.

these comments have been taking steps for some time now to reduce that reliance.

Most of the intercarrier compensation proposals would result in significant reductions in cost recovery from access charges at the expense of end user rate increases. Despite the comments of some parties in this docket that insinuate that rural LECs have kept their calling areas artificially small to opportunistically maximize access charge revenues, many of the companies endorsing these comments have shifted significant portions of their intrastate access revenue recovery to their local rates via expansion of their local calling areas. Such expansion is possible when a small company is able to establish a “community of interest” between one or more of its exchanges and a larger exchange (most often one served by Qwest in the case of the companies we represent). The intrastate access revenues that are lost as a result of the creation of the larger local calling area are made up via increases in local rates. Generally speaking, most (usually between 65% and 85%) of the subscribers in these expanded local calling areas are willing to pay the higher local rates so they can call the larger community as a local call rather than as a toll call.

Several of our companies have therefore been able to recover some percentage of their intrastate access revenues in this manner. There is an ominous trade off, of course, in the sense that higher local rates reduce these companies' ability to compete on price. Further, the number of exchanges that qualify under PSC rules for expanded local calling in terms of being able to establish a community-of-interest with a larger exchange or region of exchanges varies by company. For some companies, all or nearly all of their exchanges qualify. For others, less than half qualify. For some companies, the problem is not establishing a community-of-interest, but the level to which rates must be raised to establish the local calling area. Most subscribers are willing to see significant rate increases if their local calling area expands greatly. However, the costs of expansion for some companies are simply too high and cause local rate increases that are unacceptable for their local subscribers.[3] In such cases, there is little the company can do outside of creative long distance packages to meet their subscribers' desire for broader local calling areas.

As noted above, we have been engaged in this process for some time. The first petition for larger local calling areas since the passage of the Telecommunications Act of 1996 ("Act") was filed before our state public service commission ("PSC") more than five years ago. Today, a docket is pending before our PSC that is considering whether to make a significant portion of western Montana an expanded local calling area. Additionally,

[3] Speaking of affordability, it is worth noting that over the past six years Montana has ranked no higher than 45th and as low as 49th in per capita income.

formal conversations have been held regarding the possibility of making the entire state a local calling area. We are frankly of two minds with respect to such suggestions. On the one hand, they hold out the hope of significant reform of intrastate access charges. On the other hand, unless the PSC is very careful to ensure that all of the telephone users in the state contribute equally to the program; rates are likely to be raised to a level that is simply not competitive with other providers, using other technologies.

If resolution of the access reform issue is of great importance to our companies, it is of even greater importance to our subscribers. Section 254 of the Telecommunications Act of 1996 (hereafter, the "Act") requires that services and rates in rural areas be reasonably comparable to those in urban areas. At this point, access is one of our largest and most important cost recovery mechanisms. If the costs of maintaining rural telecommunications networks are not recovered, those networks simply won't continue to be maintained and upgraded in order to offer reasonably comparable basic and advanced services. Further, local rates are not likely to remain reasonably comparable if all of the costs of the network are shifted onto a single provider (namely the incumbent local service provider).

Of equal importance is the creation of a system of intercarrier compensation that is predictable in nature. Some of the companies supporting these comments are temporarily doing no more than they must in terms of investing in their networks and meeting the certification requirements of the USF program. They feel that in the absence of certainty in this area no major plant upgrades are possible because of the substantial risk that such investments will not be recoverable. Given the fact that in the vast majority of the exchanges we serve, ours is the only network platform capable of providing broadband access, this "slowing" of investment has worrisome implications. Stated quite simply, the loss of our networks would mean the end of not only reliable voice service, but also of broadband access in most of rural Montana.

Therefore, we are hopeful that this proceeding and our comments will be helpful in reaching workable solutions. We certainly hope our comments are taken seriously. As stated in our initial comments, we take great issue with some parties who have in the past stated that rural telephone companies are locked into old ways of thinking based on the historical wireline monopoly. For example, the initial comments of CTIA state that " … the Commission must look beyond the circuit-switched wireline legacy network assumptions that have guided intercarrier compensation, interconnection and universal service policies up to now …"[4] In the first place, only recently has any alternative to the circuit-switched wireline network come into widespread use (and in rural Montana, such alternatives

[4] Comments of CTIA, p. 3

as wireless and cable are certainly not viewed as substitutes for the existing wireline network. Secondly, nearly all of the "new technologies" continue to rely on the "legacy" network in the provision of their services. For example, wireless service is generally only wireless from the called or calling party to the nearest cellular tower. At that point, the traffic usually flows onto the wireline network. It is also true for Voice over IP services that in most cases the packets ride on the "legacy" wireline network all the way to the copper pair attached to the consumers' home.

In our view, the often disparaging references to "legacy wireline networks" are an attempt by some parties to portray incumbent telephone companies as a type of dinosaur that has lost touch with modern technology and therefore the regulatory system necessary to promote such technology. Thus our comments can easily be dismissed. In fact, this kind of mythology is a marketing ploy that ignores reality. It ignores the fact that incumbent rural telephone companies have been among the first carriers to adopt new technologies across the country (including, by the way, digital wireless service) and certainly in Montana.

For example, it is true that all of the companies supporting these reply comments provide local, circuit-switched, wireline telephone service. However, it is also true that the majority of these companies also provide interexchange services as well. Roughly half provide wireless services using cellular or PCS spectrum (and a number also hold 700 MHz spectrum for which deployment plans are currently in the development stage). A subgroup of these companies built the first statewide ATM network in Montana, which is in turn used to provide service to a network of more than 130 fully interactive videoconferencing studios. That network is used primarily to provide instruction in the state's K-12 schools and in its colleges and universities (including its tribal colleges). A large number of these companies provide CLEC services, generally via a network overbuild of the service area of a large, neighboring incumbent provider. All of the companies supporting these comments provide transport services in some manner. A small number provide cable television services, and a couple of those also provide cable modem service. All of them provide DSL service (combined, they now reach more than 250 communities with populations under 3,000 across the state), and all or nearly all have for some time been pondering how voice over IP might fit into their service offerings without eviscerating their own intercarrier compensation revenues or their commitments to universal service and to programs like enhanced 911.

Thus the notion that we rural telephone companies are outmoded dinosaurs and therefore automatically incapable of understanding new technologies and how they should fit into an intercarrier compensation system that is similarly outdated is simply not true. Today, the rural incumbent telephone companies embody so many of the historically separate industry segments and new technologies that it is imperative we thoroughly understand the positions of all segments and technologies and advocate in a manner that represents a balance among the best recommendations. In other words, by our very nature we cannot simply reject the views of a particular commenter -- because the likelihood is that we have significant investments in their industry segment or their technology. For this reason, we would actually agree with the continuation of CTIA's advice to the FCC to "craft rules that can accommodate an emerging multidimensional telecommunications market that is characterized by both convergence and intermodal competition."[5] That said, as we look for compromise opportunities, we cannot compromise on the fundamental principle that there must be adequate cost recovery for the use by others of the various networks over which we offer our own broad array of services.

II. Involvement in the Process.

In our initial comments, we noted that representatives from Montana's rural telephone companies had been particularly active in the debates regarding intercarrier compensation over the past few years. We would like to summarize that involvement again just to show that we have not sat idly

[5] Comments of CTIA, p. 3

by as these discussions have taken place. We have negotiated in good faith in a number of fora, trying to find a solution that would cross the various industry boundaries. One of our companies, Nemont Telephone Cooperative, was a member of the Intercarrier Compensation Forum (ICF) for quite some time. And while Nemont ultimately decided to walk away from the deliberations, it did so only when the group became deadlocked in a few critical areas and further compromise appeared unlikely. Company representatives have also participated with the Expanded Portland Group, the NARUC group, the Rural Alliance and last but not at all least, the various national and regional trade associations, such as NTCA, OPASTCO, USTA and the Western Telecommunications Alliance.

Again, as we noted in our initial comments, based on this large body of work with other groups and regular meetings among ourselves, we have determined that the principles put forward by the Rural Alliance, with just a few exceptions, best serve the interests of multi-discipline companies like ours. We identified those exceptions in our initial comments and will repeat them in these reply comments only when they are important to the overall discussion of the issue.

III. Benchmarks and Transition Periods

In our initial comments, we stated that we were in agreement with the Rural Alliance that local rate benchmarks were likely going to be a necessary component of any intercarrier compensation reform plan in order for that plan to be politically viable. We would agree that very low local service rates relative to average rates paid by others across the country may not be appropriate or politically sustainable. This seemed particularly true in an environment in which the companies offering those rates are relying on contributions from the subscribers of other carriers to make up the difference between those very low rates and a more appropriate benchmark rate. That said, however, we were not persuaded that a single benchmark based on the average Bell Operating Company local rates in urban areas nationwide was appropriate. In particular, we were concerned that a benchmark that did not take into account the size of a rural telephone company's local calling area was inappropriate and inconsistent with the principles of universal service.

Others expressed similar concerns. For example, the ICORE companies state in their comments, "[i]f Benchmark Local Rates are adopted, they should be "banded" to recognize different levels of lines to which local customers have access. Certainly, local rates should not be the same for customers who have access only to the 500 other lines in their exchange, as for customers with access to thousands, or even millions, of other local (or

EAS) lines."[6] NTCA adds: "End user rate increases, whether set through benchmarks or not, should … accommodate differences in the calling scopes in rural areas."[7]

On the other hand, there are those who actually think rural subscribers should be "penalized" for their status via the benchmarking process. For example, Qwest has suggested in its comments that a national benchmark rate should be established equal to 125% of the national weighted average of urban business and residential rates, interstate SLCs and intrastate SLCs.[8] Our understanding is that a rural carrier would not be eligible for USF unless it charged (or at least imputed) the benchmark rate.

Qwest's suggestion has turned the notion of "reasonably comparable" completely on its head. Most rural exchanges in the United States contain a few hundred to a few thousand lines. The lines in an exchange can usually only call the other lines in that exchange as a local (toll-free) call. Calls outside the exchange are usually toll calls on which a per-minute fee is charged in addition to the rate for local service (i.e., calls within the exchange). So it is reasonable that local rates are a bit lower in rural areas than in urban areas because in general residents of small rural exchanges must make more toll calls than their urban counterparts.

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[6] Comments of the ICORE Companies, p. 11
[7] Comments of NTCA, p. 25-26
[8] Qwest Initial Comments, Page 7

For example, our companies serve a fair number of exchanges with less than 200 lines. As explained above, many of these exchanges are not close enough to more populated areas to justify a larger community-of-interest analysis that could result in expansion their local calling areas. So, for example, a caller in Martinsdale, Montana, could only call the other 170 lines in Martinsdale as a local call. Admittedly, we have heard from at least one commenter the counterargument that most persons in urban areas may only call 15 to 20 other lines in their local calling area on a regular basis, so the value of service analysis between urban and rural local calling areas should not be given significant weight. Our response is simple. There are no doctors in Martinsdale. There are no schools, no government services, no lawyers, no accountants, no healthcare facilities, etc., etc. So any call by a Martinsdale resident to any of these types of entities is a long distance call. That is simply not the case in urban local calling areas.

But coming back to Qwest's proposal, the local rate in Martinsdale is $14.50 and the FCC-imposed und-user charge (a/k/a SLC) is $6.50, for a total of $21.00. For that $21, a customer in Martinsdale can call the other 170 customers in Martinsdale. Any call outside Martinsdale requires a per-minute toll call in addition to the monthly local rate.

We are unaware of what the national average local rate is at this time, but we have heard parties using the sum of $23. At a recent workshop of the

Montana Public Service Commission, Qwest advocated a benchmark SLC of $15 for residential and business customers.[9] So at a minimum, Qwest would be advocating a national benchmark local rate in rural areas of $38 per line. In fact, when various other taxes and fees are added such as telecommunications service to the deaf or hard of hearing, 911 service surcharges, and Montana' telecommunications excise tax, the rate in Montana would be closer to $40 per line per month.

Therefore, the subscribers in Martinsdale would see a rate increase of approximately 100% under Qwest's proposal. So a customer in Martinsdale could still call only the other 170 lines in Martinsdale as a local call, but he or she would now pay twice as much for the privilege. All other calls would continue to be toll calls, and there would certainly be no guarantee that a tiny town in Montana would see a decline in toll rates when it has not seen a decline in toll rates from the FCC's access reform activities to date.

Admittedly, at a rate of $40 per month, the Martinsdale subscriber may be able to get a better deal from a wireless competitor (in which case adopting the Qwest proposal would appear to be picking winners and losers). However, in most of the service areas of the companies supporting these comments there are no competitors, wireless or otherwise.

[9] Montana PSC Workshop on Intercarrier Compensation, June 28, 2005

Given that the problem of limited calling areas is fairly prevalent in rural areas, we would suggest that the Commission give strong consideration to creating at least two benchmarks (and perhaps more than two): one for those with large local calling areas (in terms of the number of lines that can be reached via local calls) and at least one lower benchmark for those with small local calling areas in which subscribers must make long distance calls to reach essential services as noted above. To do otherwise would result in similar rates for dissimilar services. That would be inconsistent with the universal service principles of the Act.[10]

We continue to concur with the Rural Alliance and others that the movement of local rates to benchmark rates should occur over the course of a multi-year transition period of no less than five years. And to the greatest practicable degree, any movement of local rates should occur in concert with any reduction in access rates (and residual funding from a universal service mechanism) that may be a part of the overall plan for intercarrier compensation reform. We also continue to agree with the Rural Alliance that due consideration must be given to those companies and states that have already engaged in access reform. Whether we are talking about the creation of a state universal service fund or the creation of extended "toll free" local calling areas, to the extent such reform has caused local rates to exceed

[10] 47 U.S.C.§254

whatever benchmark will be imputed, funding should be available from the Universal Service Fund to bring those local rates down to the benchmark.

Finally, it is important that local providers be able to impute the benchmark rate rather than actually being required to charge that rate to their end users. Should a carrier choose to charge less than the benchmark rate, the difference between the benchmark rate and the rate that is actually charged would simply not be recoverable through the Universal Service Fund or whatever other replacement mechanism might be in place for that purpose. To establish a contrary rule would be to severely limit the ability of such carriers to compete on the basis of price and thus be anti-competitive.

IV. POIs and Edges.

As was stated in our initial comments, one of the areas in which our support for the Rural Alliance's positions is strongest is in its rejection of some of the proposals regarding "Points of Interconnection" (POIs) and "Edges." In particular, a number of cellular carriers, paging companies, and CLECs appear to support the notion of a single Point of Interconnection per LATA.[11] Generally speaking, these companies advocate a POI at or near the Bell Operating Company's access tandem for that LATA. Furthermore, these

[11] SEE e.g., Comments of Allied National Paging Association, pp 6-7, Comments of Dobson Cellular Systems, Inc. and American Cellular Corporation, p. 5 (supporting CTIA proposal of one "edge" per LATA for delivery of originating carrier's calls)

companies often choose a point on the local Bell company's network, expecting that small, rural ILECs, for example, will simply deliver traffic to a point on another carrier's network free-of-charge.

From the perspective of a rural LEC, the fact that a cellular carrier, a paging company, or a CLEC, for example, has chosen as its interconnection point in the LATA a point on the Bell Operating Company's network imposes no obligation upon the rural ILEC to abide by that request. Carriers simply cannot be allowed to require rural LECs to transport local calls to a point that in Montana is often hundreds of miles away from that LEC's service area and is on another carrier's network. In fact, rural ILECs cannot even be required to transport such traffic at their own cost for hundreds of miles on their <u>own</u> networks.

A number of parties agreed with our position on this issue. For example, the Iowa Telecommunications Association stated that "[r]ural LEC operations are geographically limited, and they should not be forced to transport non-local calls to other carriers at points beyond which they currently have any transport responsibility."[12]

The Rural Alliance quite straightforwardly indicated that such a requirement would be illegal. It noted first that the Act and Commission rules only require that an ILEC establish an interconnection point with a

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[12] Comments of the Iowa Telecommunications Association, Page 8

requesting carrier at any technically feasible point *within the carrier's network* (noting that providers on the other side of the argument often conveniently leave out the italicized phrase at the end). The Rural Alliance also noted that the only decisions so far by the Commission have been limited to RBOCs and that ILECs are required only to provide interconnection arrangements equal (not superior) to those the ILEC provides itself. It then concludes that "[n]either the Act nor Commission rules require an ILEC to offer and provision some new form of local exchange service, including transport to distant locations, simply because a requesting competitive carrier has opted to interconnect with another LEC at a distant point.[13]

Quite simply, any proposal that requires small, rural LECs to transport calls over long distance or to points on another carrier's network at its own cost for the benefit of another carrier is manifestly unjust. The same is true of any requirement that rural ILECs carry such traffic for hundreds of miles at their own cost on their <u>own</u> networks. However, even though such requirements are absurd on their face, we are nonetheless grateful to the Rural Alliance for providing such a strong legal argument against such requirements.

V. A Bill and Keep System, Joint and Common Costs and Arbitrage.

[13] Comments of the Rural Alliance, p.103-106

We noted in our initial comments that we concur with the Rural Alliance in asserting that a Bill and Keep system of intercarrier compensation is inconsistent with the Act. That said, we also concur that rates should ultimately be cost-based to ensure proper signals to the marketplace and as uniform as possible to deter arbitrage. Those rates should include the opportunity to recover a reasonable portion of joint and common costs.

The Act states that implicit subsidies are to be removed from rates and made explicit.[14] The Commission has already engaged in actions intended to implement this language, such as the MAG order which was intended to shift implicit subsidies in interstate access rates and make them explicit in the form of higher Subscriber Line Charges (a/k/a end user charges) and new funding from the Universal Service Fund.[15]

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[14] SEE Section 254(e) of the Act, which states: "UNIVERSAL SERVICE SUPPORT. After the date on which the Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

[15] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers,* CC Docket No. 98-166, Report and Order, 16 FCC rcd 19613 (2001)*(MAG Order), recon. In part, Multi-Association Group(MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, First Order on Reconsideration, *Federal-*

However, the process of originating and terminating a call on behalf of another carrier involves activities that have very real costs that are certainly above zero in the case of most if not all rural telephone companies. In reducing the rate to zero, the Commission would simply be establishing a new implicit subsidy. This new subsidy would operate on behalf of the carriers for which the local exchange company originated and terminated calls over its network without charge. Not only would this implicit subsidy be just as inconsistent with the Act as historic implicit subsidies, there would also be no guarantee whatsoever that carriers receiving the new implicit subsidies would pass their cost savings on to consumers in the form of lower rates (e.g., lower rates for long distance services).

The counterargument made by many is that a Bill and Keep system simply recognizes that the traffic flowing in each direction is roughly balanced and therefore there should be no need for carriers to pay each other sums that would balance out in any event.[16] However, a number of commenters recognized in their initial comments that traffic is out-of-balance

State Joint Board on Universal Service, CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), *amended on recon., Multi-Association Group(MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carries,* CC Docket No. 00-256. *Federal-State Joint Board on Universal Service,* CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003). *See also, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256. *Federal-State Joint Board on Universal Service,* CC Docket 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

[16] Comments of Western Wireless and Qwest at Montana PSC Workshop, June 28, 2005

in many cases across the country.[17] In surveying the companies that support these comments we found a wide range of traffic patterns. Some routes were admittedly in balance or close to being in balance. However a number of others were significantly out-of-balance. Further, we found that the issue of whether compensation was appropriate turned not only on whether the traffic was in balance but whether costs were in balance. In our view, the costs of the incumbent rural telephone companies exceeded the costs of the carrier to which they were interconnecting in a significant majority of cases.

For these reasons, the rate(s) for intercarrier compensation (regardless of whether we are talking about access charges or reciprocal compensation) should not be zero unless the actual costs of origination and termination somehow fall to zero. Since the construction, maintenance and operation of rural networks have very real costs, it is unlikely that these costs will fall to zero.

We further concur with the Rural Alliance that such costs must include a reasonable portion of joint and common costs. To do otherwise would simply force those costs onto other customers (i.e., those of the rural LEC) and allow those parties actually causing the costs to avoid them. This would be uneconomic and patently unfair.

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[17] SEE, e.g., Comments of BellSouth (pp. 9-11), Comments of the Coalition for Capacity-Based Access Pricing (p.5), Comments of the Eastern Rural Telecommunications Association (p. 6),

As to which costs should be used, the Commission has already determined that the cost proxy models that were being considered shortly after the passage of the Act are unreliable for rural telephone companies. There is no evidence of which we are aware that those models have been improved such that the Commission's determination should be changed. Moreover, embedded costs are easily measured and objective. Given the enormous number of rural telephone companies in the United States, it seems a poor use of society's resources to encourage hundreds of challenges to the argument of what truly constitutes forward-looking costs in any particular case. For these reasons, we concur with the Rural Alliance that embedded costs should serve as the basis for determining intercarrier compensation rates going forward.

If carriers are charged a cost-based rate for using other carriers' networks to originate and terminate communications, proper economic signals are given to the marketplace. A carrier is likely to give careful consideration as to how to structure its services to make the most efficient use of the network and keep its costs low when it must pay an intercarrier compensation rate above zero. To the extent a particular carrier may also be a competitor of the carrier it uses to originate and terminate calls, this system also helps prevent the interconnecting carrier from trying to improperly impose additional network costs onto the originating or terminating carrier and its customers.

All of this said, a system of making intercarrier compensation charges as uniform as possible has the advantage of dissuading arbitrage. Arbitrage is generally the practice of attempting to change the rating of a call from toll to local so a carrier is billed at a lower reciprocal compensation rate instead of a higher access rate. When the rates for all types of interconnection are relatively uniform, the motives for arbitrage are significantly reduced.

Further, the prospect of bringing intercarrier compensation rates down to a rate that is both uniform and cost-based must, as we have earlier indicated, occur over a transition period. Otherwise, there would be an enormous rate shock to end users, the Universal Service Fund, or both. In our view, uniformity of rates to dissuade arbitrage takes precedence over bringing rates to cost-based levels. That said, the rates must come down gradually after uniformity is established.

Unfortunately, we are still left with the practice of stripping the communications stream of the information necessary to identify the originating carrier (creating what is known as phantom traffic). Therefore, as noted in our initial comments, we concur with the Rural Alliance that intercarrier compensation rates should not only become uniform over time but should fall to the lowest practicable level as well to discourage the creation of phantom traffic. However, the word "practicable" in the foregoing discussion is critically important. Neither local rates nor the Universal Service Fund are likely to be able to withstand continuous upward pressure. Therefore, the transition period necessary to get uniform intercarrier compensation rates down to levels that are purely based on cost may be quite long.

Of course, to the extent intercarrier compensation rates are anything but zero, there will likely always be "bad actors" who will try to avoid any charge, however uniform and however reasonable. For lack of a better suggestion, we continue to concur with the Rural Alliance that network obligations must be imposed on all carriers (including transiting carriers) that prevent them from stripping out call data or relieve them from obligations to identify and to maintain the integrity of traffic identification data in such a manner that allows carriers to properly charge for traffic that terminates on their networks. Those obligations must be enforced and the consequences for failing to meet them must be severe.

VI. SLCs and the Universal Service Fund.

To the extent a move to benchmark rates plus the uniform, cost-based intercarrier compensation charges are insufficient for rural telephone companies to recover their costs, then USF should be available to fill in the difference. However, we recognize that the current USF funding methodology is likely unsustainable, at least absent significant reform. Interstate revenues are decreasing and demand on the fund is increasing from a variety of sources, including demand resulting from competitive ETC designations.

Possible reform mechanisms include broadening the base of contributors to the Fund to include all providers, including VoIP providers. We also believe it is likely the Wireless Safe Harbor may be creating an opportunity for some wireless carrier to contribute less than they otherwise would be required to contribute. Since there is ample evidence that wireless carriers are fully capable of determining the jurisdictions of their traffic, the Wireless Safe Harbor should be eliminated. Whether the Commission chooses to move toward a telephone numbers-based system or towards adding intrastate revenues to the mix, such action needs to be taken sooner rather than later to keep the Universal Service Fund viable. VoIP providers should be given the option of proposing their own reliable system of reporting in order that they contribute their fair share to supporting the networks that must be in place for their services to work. If they cannot come up with a system, then a safe harbor provision must be implemented as to the VoIP providers.

Finally, while it may not be within the power of the FCC to separate out the Schools and Libraries program, the High-Cost portion of the Fund is simply too critical for carrying out Congress' universal service mandate for it to be jeopardized by the Schools and Libraries program any longer. The FCC should actively and aggressively encourage Congress to find a new funding mechanism for the Schools and Libraries program. Splitting that fund off will reduce the High Cost Fund significantly. This will reduce the pressure on carriers to fund the program and will reduce the size of the fund's "political profile" in terms of it being a target for Congress (and especially from so-called "low cost" states). This reduction in "political exposure" will come not only from the reduction in the size of the fund but also in getting the High-Cost portion away from some of the illegal and unethical practices that have plagued the Schools and Libraries portion of the Fund.

VII. Least Cost Technology.

Some CMRS carriers have been particularly vocal in their support for a "least cost technology" approach to universal service funding and intercarrier compensation. In other words, there should be a preference for using the "least cost technology" that is necessary to provide the supported services identified by the FCC. The fundamental problem with this philosophy, from our standpoint, is that the least cost technology may not provide an adequate platform for the provision of advanced services, which according to section 254 of the Act are to be provided in all areas of the country. Further, some services that are considered advanced today may be trending toward sufficiently wide-spread usage that they may appear likely to be added to the definition of universal service in the near future. It would be short-sighted to introduce a preference for a technology platform that is currently unable to be used to deliver such services when a technology platform that is capable is already in place in the form of the wireline network. Therefore, in any rules the Commission may adopt, it should reject a least cost technology approach as being inconsistent with the universal service principles of the Act, including in particular Congress' direction to make advanced services available in all parts of the country.

While, for example, broadband access is not currently among the FCC's supported services for universal service purposes, the use of such service is certainly trending toward use by a substantial majority of customers. As such, cost recovery by carriers that provide network platforms capable with relative ease of being used for broadband access and other advanced services should be deemed of critical importance by the Commission. A "least cost technology" approach, to the contrary, is one that is highly likely to lead to broadband access"haves" and "have-nots." As such, the "least cost technology" approach should be summarily rejected.

VIII. Regulatory Disparities

In reading through the various comments, it is clear that many commenters seem to feel that the incumbent telephone companies have all sorts of advantages and that intercarrier compensation is just one of the most obvious of those advantages. While it may be true that different industry segments may have different advantages, it is laughable to think that incumbent LECs have all or even most of them. Just to prove our point (and not intending to get whiny on the issue) we thought we would identify just a sampling of the regulatory advantages enjoyed by other industry segments and not by incumbent LECs. These comments are not necessarily meant to criticize regulators. In many instances, for example, state commissions have not been given jurisdiction over certain carriers by their state legislatures or have been preempted by the FCC. By the same token, the FCC has sometimes been given direction by Congress to do certain things. We just want to point out some of the disparities that give us the most heartburn and yet are rarely if ever mentioned by our competitors:

1. **Rate Filings**: Typically, regulated ILECs must apply to adjust rates and go through a waiting period or even a contested process before rates can be adjusted. This is a significant disadvantage in comparison to competitors

who can change their rates and calling plans essentially at will and can in fact react to the ILECs application by changing their rates before the ILECs' application is approved.

2. Customer Win-Back: Regulated ILECs are not to contact former customers for a certain period and may not use their customer knowledge to try and win them back. Obviously, the best time to try and win a customer back is as close as possible to the time they change providers. The longer this takes the less likely a customer will want to be bothered with the subject. Further, our best way of winning a customer back is to offer them better service. Were we able to use our customer knowledge, we would be in a far better position to offer that customer a superior package of services. At least in our opinion the customer loses as much as we do under these rules. Our competitors have no such restrictions.

3. Promotions: In some states, like Montana, ILECs are limited as to the number and duration of promotions they can offer during the course of a year. Therefore promotions that could potentially benefit customers may be lost simply because we have already done two promotions that year. Again, our competitors have no such restrictions.

4. **Number Portability**: This has been a costly debacle to address limited demand for portability. Will we see the debacle compounded with respect to voice over Cable?

5. **VoIP Cost of Customer Acquisition**: We are still required (at significant expense) to contract with a 3rd party verification company to verify a switch to our Long Distance service. Since VoIP is a non-regulated information service, they can switch customers to themselves for free.

6. **Metropolitan Trading Area as "Local:"** This ruling by the FCC that wireless calls were "local" within the MTA rather than within the exchange or EAS boundaries simultaneously gave them an incredible advantage over ILEC service that offered a MUCH smaller local calling area (and was at the whim of the local public utility commission to do anything about it) and dramatically reduced our intercarrier compensation revenues by making wireless calls that were previously subject to access charges now subject to much lower reciprocal compensation charges.

7. **Multiple Regulations from Multiple Jurisdictions**: Most competitive carriers are regulated primarily at the federal level with little or no regulatory oversight at the state level. ILECs (even very small ones) typically have to hire an entire staff, either individually or collectively (as when a statewide association does much of this work) just to comply with <u>state</u> regulation. This includes regulation of rates, quality of service, carrier

of last resort responsibilities, slamming and cramming rules, address verification obligations, annual reports, held order reports, etc., etc. A competitor's ability to escape both the time and the expense components of this regulation is a huge competitive advantage.

8. Interconnection Obligations: The obligations of an ILEC under sections 251 and 252 of the Telecommunications Act are pretty much apparent on their face. In the past, we mostly saw competitors seeking interconnection with ILECs that were at least as large or larger than the competitor. Increasingly, however, we are now seeing very large competitors using these sections with respect to small, rural telephone companies. A motivated large competitor can make the negotiation and arbitration process incredibly expensive for a rural ILEC serving a few thousand lines.

VIII. Conclusion

As the foregoing discussion illustrates, competitive advantages and disadvantages are present throughout the telecommunications industry. It is highly unlikely that this docket, even if successful, will address all of the inequities.

However, that does not change the fact that this docket is of paramount importance to rural telephone companies, for which intercarrier compensation and USF payments constitute up to 80% of revenues. Without such revenues and without a predictable mechanism for the recovery of legitimate costs these carriers will not only be unable to continue to offer advanced services which the Act statets should be provided in to all parts of the country, they will increasingly have difficulty maintaining the ability to offer even the basic supported services that define universal service.

Montana's rural telephone companies have been actively engaged for the past two years in working with other companies and other industry segments, trying to find a solution to the growing challenges to the current system of intercarrier compensation. As stated in our initial comments, we believe that the comments provided by the Rural Alliance (a merger of the ARIC and EPG groups) best state the principles upon which a future system must be based. However, we have known for some time that we cannot count on a "silver bullet" from the regulatory authorities and have tried to address some of the issues by reducing our dependence on intercarrier compensation at least to some degree via expanded local calling areas, for example.

We understand that the imputation of benchmark rates may be required, but we ask that these rates be established over the course of a transition period of not less than five years. We also ask that carriers be allowed to charge less than the benchmark rates so we may compete on price if the benchmark rate is uncompetitive in our markets. To not allow us to do so would be inherently anti-competitive.

We reject the notion of a single POI that would require us to transport calls hundreds of miles and/or to points on some other carrier's network. We also take issue with any "edge" proposal that imposes on us and our subscribers unsustainable transport costs even within our networks.

A Bill and Keep system ignores the very real costs of origination and termination and the fact that traffic remains out-of-balance in many instances. It also simply exchanges one set of implicit subsidies for another, with no guarantees whatsoever that rural subscribers will benefit from those subsidies. Therefore, there must be embedded cost-based intercarrier compensation charges to compensate a carrier for the use of its network by another carrier.

Making intercarrier compensation rates relatively uniform, regardless of the nature of the traffic (i.e., local, intrastate or interstate) is necessary in order to combat arbitrage. The problem remains, however, of carriers trying to avoid paying intercarrier compensation altogether. In part, this is due to "bad actors' that strip the communications stream of the information necessary to enable appropriate billing. The other part is technological. The "VoIP problem" (in terms of the inability to track and measure VoIP calls), for example, requires a solution. In the absence of a technological solution, a regulatory solution may be necessary, such as the safe harbor provision that has been used for wireless traffic. We may need to simply assume that VoIP providers handle a certain percentage of all calls and if we fail to move to uniform intercarrier compensation rates, we may further have to assume that some percentage of those calls are interstate in nature and therefore subject to assessment for USF purposes. VoIP providers may also need to contribute a percentage of revenues into each jurisdictional pot for further distribution to those whose networks enable such carriers' calls.

A SLC increase is a local rate increase, and we have already raised SLCs substantially. Further increases threaten the comparability of rates between urban and rural areas. Therefore, such increases should not effectively be a requirement for rural telephone companies and an option for the rest. Such a system not only threatens comparability, it also threatens competitive neutrality. Therefore, price cap companies should also be required to raise their SLCs to the cap before being eligible for any residual cost recovery from the Universal Service Fund or other funding mechanism.

Finally, the notion that least cost technology should be encouraged ignores quality of service and functionality. The Act's universal service principles state that advanced services should be available in all parts of the country. This will not happen if those networks whose technology platform is the most capable of being used to provide broadband services are not maintained and upgraded. And in rural areas such maintenance and upgrades are dependent on receiving funding from all of the carriers that use those networks via intercarrier compensation charges, along with other cost recovery mechanisms such as the Universal Service Fund.

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RESPECTFULLY SUBMITTED This 20th day of July, 2005.

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Michael Strand
CEO and General Counsel
Montana Independent Telecommunications Systems

Montana Telecommunications Association

Mid-Rivers Telephone Cooperative

Ronan Telephone Company